

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Dov Levavi	Team: Team # 4	CCRB Case #: 201405620	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 06/05/2014 8:50 PM	Location of Incident: East 145th Street and Willis Avenue	Precinct: 41	18 Mo. SOL 12/5/2015	EO SOL 12/5/2015	
Date/Time CV Reported Fri, 06/06/2014 2:19 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 06/06/2014 2:19 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Shawn Liriano	03658	951924	040 PCT
2. SGT Tameika Goode	01640	934950	040 PCT
3. POM Robert Mciver	13892	951989	040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Victor Calderin	12315	951579	040 PCT
2. POM Rodolfo Monegro	03151	953128	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Shawn Liriano	Abuse: PO Shawn Liriano frisked § 87(2)(b)	
B.POM Robert Mciver	Abuse: PO Robert McIver frisked § 87(2)(b)	
C.POM Shawn Liriano	Abuse: PO Shawn Liriano searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
D.POM Robert Mciver	Abuse: PO Robert McIver searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

On June 5, 2014, at approximately 8:50 p.m., PO Shawn Liriano and PO Robert McIver of the 40th Precinct stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants at 145th Street and Willis Avenue in the Bronx (IAB log encl. 4a-d, 5a-b, CCRB statements encl. 6a-6k). The vehicle was stopped for its tinted windows. Sgt. Tameika Goode, PO Victor Calderin, and PO Rodolfo Monegro of the 40th Precinct responded to the scene upon being called. § 87(2)(b) and § 87(2)(b) were asked out of the vehicle, after which PO Liriano allegedly frisked § 87(2)(b) and PO McIver allegedly frisked § 87(2)(b) (**Allegations A-B**). Subsequently, PO Liriano and PO McIver searched the car (**Allegations C and D**). § 87(2)(g), § 87(4-b)

§ 87(2)(b) was issued a summons for having illegal window tints.

This case was originally assigned to Inv. Olubukola Ajayi, and was reassigned to ASI Dov Levavi for closure.

Mediation, Civil and Criminal Histories

Both § 87(2)(b) and § 87(2)(b) rejected mediation. A Notice of Claim inquiry was sent to the NYC Comptroller's Office on January 8, 2015. The result of the request will be included in the case file once it is received. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) and § 87(2)(b) (encl. 3a-b).
- PO McIver has been a member of the NYPD for 3 years and has not been the subject of any previous CCRB allegations. PO Liriano has been a member of the NYPD for 3 years § 87(2)(g)
- Sgt. Goode has been a member of the NYPD for 10 years and has had five previous CCRB allegations, which have had no substantiated allegations. § 87(2)(g)
- PO Calderin and PO Monegro have been members of the NYPD for 2 years and have had no previous CCRB allegations and have had no substantiated CCRB allegations (encl. 2a, 2e).

Finding and Recommendations

Potential Issues

No verified statement from § 87(2)(b) was obtained because he failed to appear at the CCRB for two scheduled appointments.

Recommendations

Allegation A – Abuse of Authority – PO Shawn Liriano frisked § 87(2)(b)

Allegation B – Abuse of Authority – PO Robert McIver frisked § 87(2)(b)

§ 87(2)(b) alleged in his telephone statement that following the vehicle stop, he provided documentation to PO Liriano upon request and when the officers returned to the car, both occupants were removed and frisked by PO Liriano and PO McIver (encl. 6a). § 87(2)(b) testified that he was frisked by PO McIver and stated that while he did not see PO Liriano frisk § 87(2)(b) he believed this occurred because he saw PO Liriano tell § 87(2)(b) to put his hands up and § 87(2)(b) extend his arms (encl. 6d-f). § 87(2)(b) added in a subsequent telephone statement that as the officers first approached § 87(2)(b)'s car, he had his hands in his lap and § 87(2)(b) had his hands on the steering wheel.

The officers did not dispute that the civilians were removed from and brought to the back of their car. According to PO McIver, he and PO Liriano removed § 87(2)(b) and § 87(2)(b) from the car after § 87(2)(b)'s information was run and prior convictions for possession of a weapon were found (encl. 7n-p). This led PO McIver to suspect that there might be a weapon in § 87(2)(b)'s car. He stated that he did not recall if any frisk was conducted. Sgt. Goode stated that she arrived on scene while § 87(2)(b) and § 87(2)(b) were still in their car, and that PO Liriano asked them to exit their car after she notified him that the identification check run in her RMP uncovered prior arrests of § 87(2)(b) for possession of a weapon (encl. 7h-j). She remained standing by her RMP for the remainder of the incident but did not recall if she saw PO Liriano make physical contact with either civilian and denied that a frisk was conducted.

PO Liriano did not mention § 87(2)(b)'s prior arrests or the results of the ID check during his CCRB interview (encl. 7u-w). He stated that while he was in his RMP after obtaining § 87(2)(b)'s license, he saw § 87(2)(b)'s silhouette reach multiple times for the compartment between the two front seats of his car. This prompted him to approach the car and ask § 87(2)(b) out for safety purposes, after which both occupants were brought to the back of the car. PO Liriano did not recall if he frisked either civilian or if he saw any officer do so. Sgt. Goode was working with PO Victor Calderin, who recalled being present at the scene but no details about the incident, and PO Monegro, who did not recall being present. § 87(2)(b) § 86(4) §

§ 87(2)(g)

In order to perform a frisk, an officer must have reasonable suspicion that a person is armed and dangerous. Arizona v. Johnson, 555 U.S. 323 (2009). (encl. A1-A8). While police officers may exercise their discretion to require occupants to exit a vehicle during a lawful traffic stop, they require reasonable suspicion of criminality or that an individual is armed in order to conduct a frisk once the occupant has exited. People v. Barriera, 191 A.D.2d 153 (1993) (encl. i-iii). Such suspicion should be supported by observations or factors, such as a noticeable bulge, or presence in an area with frequent shootings, that

contribute to such a particularized suspicion. People v. Isaac, 107 A.D.3d 1055 (2013) (encl. iv-v). Once he is removed from a vehicle, an individual's previous motions as if moving something inside the vehicle do not justify a frisk as there is no immediate threat to the officers' safety. People v. Chann, 221 A.D.2d 155 (1995) (encl. vi) Finally, knowledge of an individual's past record, without indicia of criminality based on observed behavior or reliable testimony, does not provide officers with even the founded suspicion necessary to question that person about his conduct. People v. Boulware, 130 A.D.2d 370 (1987) (encl. vii-ix).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) No officer reported an observable bulge on the clothing of § 87(2)(b) or § 87(2)(b) uncooperative behavior, or other elements that may have contributed to a suspicion of weapons. Sgt. Goode described § 87(2)(b)'s demeanor as calm. § 87(2)(g)

Allegation C - PO Shawn Liriano searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation D - PO Robert McIver searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(4-b) § 87(2)(g)

It is undisputed that POs Liriano and McIver searched the car occupied by § 87(2)(b) and § 87(2)(b)

§ 87(2)(b) alleged in his telephone statement that PO Liriano entered and searched his car. § 87(2)(b) was consistent in his telephone statement and in-person testimony that PO Liriano and PO McIver conducted a search of the car. He described it as a "thorough" search and stated that all four doors were open at one point during the approximately two-minutes that it lasted.

PO Liriano and PO McIver officers both acknowledged that based on the circumstances noted above, they determined to inspect § 87(2)(b)'s vehicle after both occupants had been taken to the rear of the car and were being watched by Sgt. Goode and her partners. PO Liriano did not recall if he actually leaned into or entered any part of the car, but stated that he looked at the "lunge-able" areas that were visible to him from the front driver's side window.

PO McIver, however, acknowledged that a search of the vehicle consistent with the accounts of § 87(2)(b) and § 87(2)(b) was conducted. PO McIver claimed that he did not recall who searched the vehicle with him, but used the designation “we” when describing the search, just as he had done with the stop of the vehicle and other actions carried out by both him and PO Liriano. He stated that based on the prior arrests, “We tossed the vehicle for any weapons in the lunge-able areas.” Both PO McIver and the other officer conducting the search leaned into the car to search these “lunge-able” areas, which PO McIver described as under and behind both the driver’s and passenger’s seats. The investigation determined that the officer conducting this search along with PO McIver was PO Liriano. Sgt. Goode stated that she remained standing by her RMP, about five feet from § 87(2)(b) and § 87(2)(b) while PO Liriano looked into the car by leaning into the front driver’s seat. She believed another officer, whom she did not identify but is known to the investigation as PO McIver, looked inside the front passenger’s seat.

Even limited intrusion into a vehicle’s reachable areas not permitted without information leading to the conclusion that a weapon located in the vehicle presents an actual and specific danger to officers’ safety. People v. Torres, 74 N.Y.2d 224 (1989) (encl. x-xvi).

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED].

According to Sgt. Goode’s statement, PO Liriano and PO Calderin did not remove the vehicle’s occupants or search the vehicle until she notified PO Liriano of the results of her search for § 87(2)(b) s information. § 87(4-b) § 87(2)(g) [REDACTED]

§ 87(2)(g), § 87(4-b) [REDACTED]

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date